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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,368	04/05/2007	Lorna M. Kessell	118989-06060514	2819
20583	7590	01/13/2011		
JONES DAY 222 EAST 41ST ST NEW YORK, NY 10017			EXAMINER ARNOLD, ERNST V	
			ART UNIT	PAPER NUMBER
			1613	
			MAIL DATE	DELIVERY MODE
			01/13/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/582,368

Applicant(s)

KESSELL ET AL.

Examiner

ERNST V. ARNOLD

Art Unit

1613

—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED 27 December 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-9, 11 and 13-21.
Claim(s) withdrawn from consideration: 10.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☒ Other: IDS 9/24/10.

/Ernst V Arnold/
Primary Examiner, Art Unit 1613

Continuation of 11, does NOT place the application in condition for allowance because: Applicant's arguments are not persuasive and Applicant has filed an IDS for the Examiner's further consideration. Applicant asserts that Flick is directed to an 'after sun soother with aloe vera' composition and not a polysiloxane dispersion but rather an aqueous formulation and it is merely impermissible hindsight reconstruction using the present application as a guide to combine the elements. Respectfully, the Examiner cannot agree for the following reasons. First, Kessel teaches that any suitable siloxane fluid can be used in the dispersion and directs the artisan to make sunscreen formulations that contain titanium dioxide (pages 4-5 of the FINAL Office Action). The secondary reference of Flick is relied upon for teaching a polysiloxane that meets the instant limitations for use in titanium dioxide sun compositions. Secondly, it remains the Examiner's position that the addition of titanium dioxide imparts sunscreen activity to the composition of Flick whether or not it is used 'after sun' or not. This is just subjective use of the composition as certainly one can be further exposed to sun. Thus, absent unexpected results it is obvious to combine the teachings especially when Kessel teaches that any suitable siloxane fluid can be used and Flick teaches a siloxane fluid for use in skin compositions with titanium dioxide. In other words, Applicant is not the first to use Monasil PCA in skin compositions with titanium dioxide absent unexpected results. These arguments are not persuasive and claims 1-9, 11 and 13-21 remain rejected.